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No. 544

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

IN THE MATTER OF BLACK RANCHES, INC., A Nebraska Corporation, Debtor, in Corporate Reorganization Proceedings under Chapter X of the Federal Bankruptcy Act.

ROE R. BLACK, AVIS C. BLACK, ROE C. BLACK, BLACK RANCHES, INC., a corporation, Debtor, and THOMAS HART FISHER,

Petitioners,

vs.

ANNA C. BRANDO, as Administratrix of the Estate of MARLON BRANDO, SR., Deceased, and MARLON BRANDO, JR.,

Respondents.

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

Respondents' answering brief is based upon two falsehoods:

1. Respondents' brief tries to deceive this Court into the erroneous belief that there never was any signed agreement by Marlon Brando (in the form of a corporate resolution of Black Ranches, Inc. *bearing Marlon Brando's*

own signature) which required Brando to pay a grazing fee of $4 per head per month upon the many thousands of Brando-owned cattle which were grazed upon Debtor's land during the 3½ year period from April, 1952, to September, 1955, and under which written agreement respondents failed to pay Debtor the sum of $99,108.50.

Obviously, if respondent's contention were *true,* petitioners would have no complaint, for respondents would have succeeded in perverting the issues *by substituting a false issue of fact for an admitted breach of fundamental bankruptcy law (see below).* But respondents' factual contention is flatly *untrue,* as we shall now demonstrate beyond any doubt.

We ask this Court to turn to pages 129 and 548-9 of the printed Record on Appeal, where the Court will find that Marlon Brando signed his own name "Marlon Brando" under the word "Approved," in his capacity as chairman of the Directors' meeting held on May 8, 1952, *at which the following resolution was unanimously adopted by Marlon Brando and the two other Directors of Debtor* (said three Directors constituting the entire Board of Directors of Debtor):

> "RESOLVED, that as of April 15, 1952 Penny Poke Ranch, [a corporation wholly owned by the Brandos], Marlon Brando and Marlon Brando, Jr., shall pay Black Ranches, Inc. $4.00 per head per month for each weaned animal, plus any additional feed Black Ranches, Inc. is required to purchase on behalf of said Penny Poke Ranch, Marlon Brando and Marlon Brando, Jr.
>
> * * *
>
> APPROVED: [signed] Marlon Brando, Chairman of the Meeting."

Moreover, Marlon Brando testified under oath (R. 409):

> "I attended the [Directors] meeting and *signed minutes of the meeting of the Board of Directors of*

the Debtor held on May 8, 1952, which show that a resolution was *unanimously adopted,"* to the foregoing effect, *i.e.,* that as of April 15, 1952, Penny Poke-Brando group became obligated to pay Debtor $4 per head per month as a grazing fee for each of their weaned animals which were grazed upon Debtor's land after April 15, 1952, plus any additional cattle feed which was purchased by Debtor and fed to their Penny Poke-Brando cattle. (Emphasis added.)

Brando further testified (R. 40-410) that when J. A. Cobbey, who was Vice-President and Treasurer of Black Ranches, Inc. and one of the Directors who attended said stockholders' meeting, had first proposed a grazing fee on all of Brando's grown and weaned cattle of $4 per head per month, Brando had responded:

> "*I accepted it,* although I didn't like it because I thought it was higher than the going rate." (Emphasis added.)

Although there were other cattle of other owners than Brando which were being grazed on the Black Ranch for which they were paying a grazing charge from $4.50 per month (R. 409) to as high as $6 per head per month (R. 430).

With this sworn oral testimony in the record, respondents had no need to prove a *written* contract in order to bind Brando to pay Debtor the unpaid grazing fee of $99,108.50. But respondents DID prove such a written contract.

J. A. Cobbey, the other Director of Debtor, confirmed Brando's foregoing testimony in his own sworn testimony. He testified (R. 431):

> "I had made some investigation and I thought he [Brando] should pay $4 a head—it was figured out on that basis. My office figured out the $4. . . . *He*

> [*Brando*] *did agree to this $4 charge I made to him, though he was against it.*" (Emphasis added.)

Cobbey also testified (R. 432) that

> "It was my understanding that the $4 charge would include *all cattle on our* [*Debtor's*] *ranch of Marlon Brando, Jr. or Marlon Brando, Sr., or Penny Poke.* . . . If there were *any other cattle,* there was [also] to be *a* [*like*] *payment to the Debtor on them.*".

It is true, as respondents say in their answering brief (p. 3), that the trial judge "stated" during the trial that, *EXCEPT for Debtor's corporate minutes which were approved by Brando's own signature,* there was "no [written] evidence of a bilateral contract" requiring Brando to pay a grazing fee of $4 per head per month to Debtor upon all Brando-owned cattle which were grazed upon Debtor's land. But of course our whole point in our petition for the writ of certiorari is that there *WAS a signed agreement bearing Marlon Brando's own signature* (in the form of the corporate resolution setting a $4 per head per month grazing fee on Brando-owned cattle), and it was for this reason and this reason only, that the trial judge felt obliged to hold, in plain violation of fundamental bankruptcy law, as the Circuit Court's opinion shows (our petition, Appendix I, page 25):

> "Having relied upon *quantum meruit,* appellants [petitioners] cannot now switch their primary reliance to the [written] corporate resolution [even though signed by Marlon Brando himself] and, thereby, to an express contract theory."

Respondents boldly but fallaciously argue in their answering brief (p. 4) that petitioners have made "an erroneous, if not false, construction of [both] the lower courts' [the District Court and the Court of Appeals]

opinions," because "petitioners, in fact, were not expressly or impliedly *prevented from presenting evidence of an express* [*written*] *contract,*" upon which to base their right to recover from respondents the unpaid $4 per head per month grazing fee amounting to $99,108.50. We say that this argument represents respondents' (*not* petitioners') "erroneous, if not false, construction of [both] the lower courts' opinions," because petitioners have never, either "expressly" or "impliedly," asserted that *petitioners* were "prevented from presenting evidence of an express contract," upon which to base their right to recover from respondents the unpaid $4 per head per month grazing fee amounting to $99,108.50. In fact, directly to the contrary, petitioners' whole contention is that, far from being prevented from presenting evidence of an express contract, the *express written contract* in the form of the "approved" directors' resolution adopted and then approved in writing by Marlon Brando's own signature, was their own direct, positive and uncontrovertible evidence of the existence of such written agreement, which they themselves offered in evidence in this case.

This brings us back to the primary point in our petition for certiorari, namely, that the sole ground for the denial by both the District Court and the Court of Appeals of petitioners' right to recover the $99,108.50 which was due but unpaid to Debtor by the Brandos on their $4 per head per month grazing fee, was their untenable holding (Appendix I, p. 24), completely contrary to fundamental bankruptcy law (which law is cited on page 7 of our petition for certiorari) that, even though there was undeniably an express contract between Debtor and Brando, it could not be relied upon by Debtor and enforced by the bankruptcy court, merely because such express contract was not PLEADED in petitioners' set-offs and counterclaims.

We therefore regard the following admission in respondents' brief (p. 4) as a *confession of error* that both the trial court and the Court of Appeals had violated fundamental bankruptcy law:

> "We [respondents] *do not question* petitioners' citation of [Federal] cases for the proposition that *strict rules of pleading are NOT applicable to a proof of claim in bankruptcy.*" (Emphasis added.)

All of which makes quite ridiculous respondents' further contention (p. 3) that "petitioners do not assert any *conflict of decisions* within *the circuits.*" *For the plain and unalterable fact is that the decision in this case is directly in conflict with the decisions in the Second Circuit (3 decisions), the Fifth Circuit (1 decision), and the Eighth Circuit itself (2 decisions), all of which conflicting decisions are cited in the first paragraph at the top of page 7 of our petition.*

Therefore, respondents are only trying, as we have already said above, to deceive this Court when they falsely contend (1) that we have not shown "any conflict within the circuits," and (2) that all that is involved here are "findings of fact by the trial court," in respondents' attempt to invoke the "clearly erroneous" rule. However, *since there is no dispute of fact whatsoever over the written agreement in the form of a signed corporate resolution bearing Brando's own signature,* it is obvious that respondents' desperate but false pretense that there is only a disputed issue of fact, which make the "clearly erroneous" rule applicable, is merely a form of "strained semantics," to use respondents' own cogent phrase (p. 4).

On the basis of what is said above, we submit that this Court, *merely by reading respondents' answering brief,* can readily determine that the decision of both of the lower

courts in this case *is squarely in conflict with the prior decisions of the Second, Fifth and Eighth Circuits which we have cited, and represents a gross distortion of Federal Bankruptcy Law which is more than sufficient to justify the granting of the writ of certiorari in this case.*

2. Respondents' brief further tries to deceive this Court into the erroneous belief that there was no evidence that the grazing fee of $4 per head per month amounting to $99,108.50, which was incontestably due Debtor from Brando in accordance with the corporate resolution approved in writing by Brando, had ever in fact been paid to Debtor. But the trial judge's holding (R. 260-1) that the "accounting" between the Brandos and Debtor "as it is presented to the [trial] court," which "accounting," as the trial judge conceded, was "characterized" by "something less than perfection," had failed to "persuade" the trial court that Debtor had been "overreached" by the Brandos' failure to pay Debtor the $4 per head per month grazing fee, was so vague that respondents do not even cite it, let alone quote it, in their brief.

The *falsity* of this second contention in respondents' brief *is plainly revealed and admitted by respondents' following statement in their own brief (p. 3)*:

> "The trial court also concluded that [only] $3.00 per head per month was reasonable and that Black Ranches Inc. had received credit *in that amount* [*i.e.*, the amount of $3, but *not* the amount of $4 per head per month]."

Moreover, the Court of Appeals' opinion (App. I, 25) itself shows that it correctly concluded that *"there was ample evidence that* [*only*] *$3 per head per month was credited Debtor"* for grazing the Brando-owned cattle on Debtor's land.

Thus the fact that the $4 per head per month grazing fee (upon which the sum of $99,108.50 is still due) was not paid to Debtor by Brando is not only proven by the trial judge's own holding, but is confirmed by the Court of Appeals' own opinion as well.

CONCLUSION

Since respondents concede (a) that both the trial court and the Court of Appeals have denied petitioners' claim to $99,108.50 (as the unpaid portion of the $4 per head per month grazing fee) *solely because of petitioner's failure to PLEAD the written agreement in the form of the corporate resolution signed by Marlon Brando,* and since the respondents also concede (b) that it has been repeatedly held by the other Circuit Courts of Appeals (for the Second, Fifth and Eighth Circuits) that "strict rules of PLEADING are NOT APPLICABLE to a proof of claim in bankruptcy," it is incontestable that the decisions in this case in both of the courts below violate fundamental bankruptcy law, as laid down in the Second, Fifth and Eighth Circuit Courts of Appeals in these earlier cases which we have cited in our petition (top, page 7).

Therefore petitioners respectfully submit that this Court should issue its peremptory writ of certiorari *without the necessity of an oral argument in this Court,* and should reverse the judgments of the lower courts and remand this case to the District Court of Nebraska for further proceedings there, to the end that petitioners' fundamental rights under Federal Bankruptcy Law herein claimed may be effectuated.

Respectfully submitted,

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